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 8 United States of America

9 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Case No. 10CR4246-JM
11)
Plaintiff,) RESPONSE AND OPPOSITION
12) TO DEFENDANTS' MOTIONS
v.) FOR DISCOVERY AND LEAVE
13) TO FILE FURTHER MOTIONS
BASAALY SAEED MOALIN (1),)
14 ISSA DOREH (3),)
15)
Defendants.) Date: December 3, 2010
) Time: 11:00 am
) Hon. Jeffrey T. Miller

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 18 COMES NOW the UNITED STATES OF AMERICA, by and through
 19 its counsel, Laura E. Duffy, United States Attorney, William
 20 P. Cole and Caroline P. Han, Assistant United States
 21 Attorneys, and respectfully submits the following Response
 22 and Opposition to Defendants' Motions for Discovery and for
 23 Leave to File Further Motions.
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I

STATEMENT OF FACTS**A. The Indictment**

On October 22, 2010, a federal grand jury returned an Indictment charging defendants Basaaly Saeed Moalin ("Moalin"), Mohamed Mohamed Mohamud ("Mohamud"), and Issa Doreh ("Doreh") with one count of conspiracy to provide material support to terrorists, in violation of 18 U.S.C. § 2339A, one count of conspiracy to provide material support to a foreign terrorist organization, in violation of 18 U.S.C. § 2339B, one count of conspiracy to kill in a foreign country, in violation of 18 U.S.C. § 956, and one count of conspiracy to launder monetary instruments, in violation of 18 U.S.C. § 1956. In addition, defendant Moalin was also charged with one count of providing material support to terrorists, in violation of 18 U.S.C. § 2339A.

B. Factual Summary

Moalin, Mohamud and Doreh conspired to provide money to al-Shabaab, a violent and brutal militia group in Somalia. The U.S. Department of State designated al-Shabaab as a foreign terrorist organization on February 26, 2008. Al-Shabaab has used assassinations, improvised explosive devices, rockets, mortars, automatic weapons, suicide bombings and other tactics of intimidation and violence to undermine Somalia's Transitional Federal Government and its supporters.

In late 2007 through early 2008, Moalin was in direct telephone contact with Aden Hashi Ayrow, a prominent

1 military leader of al-Shabaab. Ayrow requested money from
2 Moalin, who then coordinated fund-raising efforts and money
3 transfers with Mohamud and Doreh.

4 The money that was raised was sent to Somalia using
5 Shidaal Express, a money remitting business and hawala which
6 operated in San Diego until 2009. Hawalas are alternative
7 money remittance systems that consist of a network of money
8 brokers who transfer funds on behalf of customers to
9 recipients in other countries. While hawalas made be
10 licensed to operate in the United States and may use United
11 States financial accounts to make monetary transfers and
12 remittances overseas, they also operate with a reduced and
13 less formal paper trail and among trusted connections. When
14 the defendants sent money to al-Shabaab or other insurgent
15 groups, they often provided false names for the senders and
16 recipients.

17 Moalin also provided a house in Somalia, knowing the
18 house would be used in preparation for, and to carry out,
19 a conspiracy to kill persons in a foreign country. After
20 Ayrow's death on May 1, 2008, the conspirators continued to
21 transfer money from San Diego to Somalia to fund terrorist
22 activities.

23 II

24 DISCOVERY MOTION

25 The United States has produced approximately 56 pages,
26 3 CDs, 3 DVDs to defendant Moalin; approximately 42 pages,
27 2 CDs, and 2 DVDs to defendant Mohamud; and approximately
28 42 pages, 2 CDs, and 1 DVD to defendant Doreh. The United

1 States expects to produce approximately 1200 telephone calls
2 and transcripts of over 100 telephone calls in the coming
3 weeks.

4 A. The United States Will Disclose Information
5 Subject to Disclosure under Rule 16(a)(1)(A)
6 and (B) of the Federal Rules of Criminal Procedure

7 The United States will provide each defendant with his
8 own statements, as provided by Rule 16(a)(1)(A) and (B).

9 B. The United States Will Comply with
10 Rule 16(a)(1)(E)

11 The United States will permit defendants Moalin,
12 Mohamud, and Doreh to inspect and copy or photograph all
13 books, papers, documents, photographs, tangible objects,
14 buildings or places, or portions thereof, which are within
15 the possession, custody, or control of the United States,
16 and which are material to the preparation of the defendants'
17 defenses or are intended for use by the United States as
18 evidence-in-chief at trial or were obtained from or belong
19 to the defendants. In fact, the United States has already
20 informed the defendants that certain items are available for
21 their inspection upon request. In addition, the United
22 States has already permitted defendant Moalin to inspect
23 items recovered from his home pursuant to a search warrant.

24 Defendants Moalin and Doreh have also moved for the
25 United States to provide them with documents and other
26 tangible objects which are intended for use by the United
27 States in rebuttal. Rule 16 does not require the disclosure
28 by the prosecution of evidence it intends to use in

1 rebuttal. United States v. Givens, 767 F.2d 574 (9th Cir.
2 1984), cert denied, 474 U.S. 953 (1985).

3 C. Brady and Henthorn Material

4 The United States will perform its duty under Brady v.
5 Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427
6 U.S. 97 (1976), to disclose exculpatory evidence within its
7 possession that is material to the issue of guilt or
8 punishment, as well as its duty under Giglio v. United
9 States, 405 U.S. 150 (1972), to provide information on any
10 benefits provided to the United States' witnesses in
11 exchange for their testimony. Additionally, the United
12 States will examine the personnel records of any government
13 personnel who will testify at trial and provide such
14 material as the defense may be entitled to receive under
15 United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991).

16 D. Witness Lists, Names, and Addresses

17 There is no requirement in a non-capital case for the
18 United States to supply the defendant with a list of
19 witnesses it expects to call at trial. The United States
20 objects to providing any such list at this time, and also
21 objects to any request for the names and addresses of
22 witnesses that the United States may or may not call at
23 trial. Criminal convictions of witnesses, known to the
24 United States, will be disclosed prior to the witnesses'
25 testimony.

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1 E. The Defendants Are Not Entitled to the Disclosure
2 of Witness Statements Prior to the Witness
3 Testifying on Direct Examination at Trial

4 Production of witness statements is governed by the
5 Jencks Act, 18 U.S.C. § 3500, and need occur only upon
6 timely motion after the witness testifies on direct
7 examination. See United States v. Taylor, 802 F.2d 1108,
8 1118 (9th Cir. 1986); United States v. Mills, 641 F.2d 785,
9 790 (9th Cir. 1981). Even material believed to be
10 exculpatory and therefore subject to disclosure under the
11 Brady doctrine, if contained in a witness statement subject
12 to the Jencks Act, need not be revealed until such time as
13 the witness statement is disclosed under the Act. See
14 United States v. Bernard, 623 F.2d 551, 556 (9th Cir. 1979).

15 F. Giglio Information and Agreements
16 Between the Government and Witnesses

17 An agreement that the Government makes with a witness
18 for testimony in exchange for money or in exchange for
19 favorable treatment in the criminal justice system is
20 generally subject to disclosure as impeachment evidence
21 under Brady and Giglio. See United States v. Kojayan, 8
22 F.3d 1315, 1322-23 (9th Cir. 1993); Benn v. Lambert, 238
23 F.3d 1040, 1054-60 (9th Cir. 2002). The United States will
24 comply with its Giglio obligation.

25 G. Motion Pursuant to Rule 12(b)(4)(B)

26 Defendants Moalin and Doreh have sought "notice of the
27 government's intention to use any evidence (in its case-in-
28 chief at the trial) which defendants may be entitled to
suppress." The United States hereby notifies defendants

1 Moalin, Mohamud, and Doreh that the United States intends
2 to use in its case-in-chief at trial all evidence which the
3 defendants are entitled to receive in discovery under
4 Rule 16, subject to any relevant limitations.

5 H. 404(b) Evidence

6 The Government will disclose in advance of trial the
7 general nature of any "other bad acts" evidence that the
8 United States intends to introduce at trial pursuant to Fed.
9 R. Evid. 404(b). Evidence should not be treated as "other
10 bad acts" evidence under Fed. R. Evid. 404(b) when the
11 evidence concerning the other bad acts and the evidence
12 concerning the crime charged are "inextricably intertwined."
13 See United States v. Soliman, 812 F.2d 277, 279 (9th Cir.
14 1987).

15 I. Defendants' General Discovery Requests

16 To the extent that the defendants' general discovery
17 requests exceed the scope of Rule 16 and Brady, the United
18 States objects to the requests.

19 III

20 MOTION FOR LEAVE TO FILE FURTHER MOTIONS

21 The United States does not oppose defendants Moalin and
22 Doreh filing further motions if they are based on new
23 discovery or other information not available to the
24 defendants at the time of motion hearing on this motion.

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IV

CONCLUSION

For the foregoing reasons, the United States requests that the Court deny the defendants' motions, except where unopposed.

Dated: November 24, 2010.

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

s/Caroline P. Han
CAROLINE P. HAN
WILLIAM P. COLE
Assistant U.S. Attorneys

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 10CR4246-JM
Plaintiff,)
v.)
BASAALY SAEED MOALIN (1),) CERTIFICATE OF SERVICE
ISSA DOREH (3),)
Defendants.)

IT IS HEREBY CERTIFIED THAT:

I, CAROLINE P. HAN, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Response and Opposition to Defendants' Motions for Discovery and for Leave to File Further Motions on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Marc Geller
Attorney for defendant Moalin
2. Kenneth Troiano
Attorney for defendant Doreh

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 24, 2010.

s/Caroline P. Han
CAROLINE P. HAN